

REMARKS

Claims 1, 3-30, and 33-42 are pending, with claims 1 and 30 being independent. Claims 2, 31, and 32 have been cancelled. Claims 1, 30, 35, 36, and 39 have been amended. No new subject matter has been added.

Support for the amendments to Claims 1, 30, 35, 36, and 39 can be found at least in Figures 1 and 2; at page 3, line 21 - page 2, line 28; and page 5, line 28 - page 6, line 10 of the specification as filed.

CLAIM REJECTIONS - 35 U.S.C. §103(a)

“As reiterated by the Supreme Court in KSR, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)).

Claims 1, 3-19, 26-28, 30, 33-35 and 37-39

The instant Office Action states that Claims 1, 3-19, 26-28, 30, 33-35 and 37-39 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hunt et al. (U.S. Patent No. 5,835,716; hereinafter “Hunt”) in view of Williams et al. (U.S. Patent No. 6,560,509; hereinafter “Williams”) and in further view of Theil (U.S. Patent No 6,035,291, hereinafter “Theil”). Applicants have reviewed the above-cited art and respectfully submit that the embodiments as recited in Claims 1, 3-19, 26-28, 30, 33-35 and 37-39 are patentable over Hunt in view of Williams and Theil for at least the following rationale.

Independent Claim 1 recites the features (emphasis added):

An information exchange system comprising:
a link to a communication network coupled to at least one shipper user, at least one carrier user, and a plurality of partner databases storing information related to carrier availability;
a database coupled to said link, said database storing a demand entry and a plurality of carrier entries that arrive to said database through said communication network, said demand entry comprising shipping demand specifications and said plurality of carrier entries comprising carrier availability information;
a logic unit coupled to said database, said logic unit receiving said demand entry, automatically selecting one of said plurality of carrier entries based on an attribute of said demand entry, and automatically booking said selected carrier entry in response to said demand entry;
wherein said database and said logic unit are part of an integrated exchange computer of said information exchange system; and
wherein said partner databases belong to partner exchange entities that are distinct from said carrier and shipper users of said information exchange system, are registered with said integrated exchange computer, maintain information regarding shipping demand or carrier information separate from said database, and send said information to said integrated exchange computer via an application program interface of said information exchange computer.

Claim 30 recites similar features. The Applicants submit that the features recited in independent Claims 1 and 30 are not rendered obvious by Hunt in view of Williams and/or Theil. More specifically, neither Hunt, Williams, nor Theil is understood to disclose (emphasis added)

... a link to a communication network coupled to at least one shipper user, at least one carrier user, and a plurality of partner databases storing information related to carrier availability... wherein the partner databases belong to partner exchange entities that are distinct from said carrier and shipper users of said information exchange system, are registered with said integrated exchange computer, maintain information regarding shipping demand or carrier information separate from said database, and send said information to said integrated exchange computer via an application program interface of said information exchange computer...

as is recited in Claim 1 and similarly in Claim 30.

The instant Office Action, §4a, states, “... Hunt discloses the use of a partner subsystem (9) with a request database, that is different from the transportation database, and which ports data to the centralized database, which stores demand specification information, See Claims 6-9, Column 4, lines 45-62.” Applicants disagree and submit that Hunt does not disclose the use of a partner database, as described in Applicants’ claims 1 and 30. Instead, Applicants understand that Hunt discloses in Column 4, lines 45-48 (emphasis added): “Subsystem 9 represents an input/output point at a carrier or shipper site that is porting data to centralized database 50 which can be administered by the carrier, shipper, or a third party.”

The Applicants do not understand Hunt to disclose or imply that either of subsystems 8 or 9 of Figure 1A comprises a partner database storing information related to carrier availability, “... wherein said partner databases belong to partner exchange entities that are distinct from said carrier and shipper users of said information exchange system,” as recited in Claims 1 and 30 of the present invention. Instead, the Applicants understand Hunt to disclose the use of a single centralized database 50 with which user terminals (e.g., subsystems 8 and 9 of Figure 1A) are coupled. More specifically, the Applicants submit that one skilled in the art would not equate an input/output point as disclosed by Hunt with the partner databases recited in Claims 1 and 30. To that end, Applicants submit that Hunt is silent with respect to partner databases, links thereto, or receipt of information there from, as are described in Claims 1 and/or 30.

The Applicants submit that Williams and Theil both fail to overcome the shortcomings of Hunt. The Applicants do not understand either of Williams or Theil to disclose “... a plurality of partner databases storing information related to carrier availability... wherein said partner databases belong to partner exchange entities that are distinct from said carrier and shipper users of said information exchange system” as recited in Claims 1 and 30.

Therefore, the Applicants submit that Hunt alone, or in combination with Williams and/or Theil, fails to teach or suggest all of the features of Claim 1 or Claim 30. Furthermore, the Rejection fails to explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.

For at least the foregoing rationale, Applicants respectfully submit that Claims 1 and 30 are patentable over Hunt in view of Williams and in further view of Theil, and that these claims overcome the rejection under 35 U.S.C. §103(a). Accordingly, the Applicants submit that the rejections of Claims 1 and 30 under 35 U.S.C. §103(a) are not supported by the cited art. Claims 3-19 and 26-28 depend from Claim 1 and recite additional features descriptive of embodiments of the present invention. Accordingly, the Applicants submit that the rejection of Claims 3-19 and 26-28 under 35 U.S.C. §103(a) are also not supported by the cited art. Claims 33-35 and 37-39 depend from Claim 30 and recite additional features descriptive of embodiments of the present invention. Accordingly, the Applicants submit that the rejection of Claims 33-35 and 37-39 under 35 U.S.C. §103(a) are also not supported by the cited art.

Claims 5 and 34, Unsupported Official Notice

With respect to Claims 5 and 34, the instant Office Action states:

Hunt ... fails to disclose the logic unit allows a user to define a subgroup within the exchange system, and assign unrestricted access to only members of the subgroup. The examiner takes official notice that the use of defining a group who has unrestricted access to the system is old and well known in the art.

See the instant Office Action, page 8, section 26 (emphasis added).

By only generally referring to features of Windows® network products, not providing citations of support for these generalizations, and not relating such art to Applicants' claims, Applicants respectfully submit that the instant Office Action has provided inadequate support of a finding of Official Notice.

The "assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support." MPEP § 2144.03(A), citing *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Indeed, "[i]t is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based." MPEP § 2144.03(E), citing *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Ahlert*, 424 F.2d 1088, 1092, 165 USPQ 418, 421 (CCPA 1970)). Per MPEP §2144.03 (A), "...assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art" (emphasis added). *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979).

Per this guidance of the MPEP, Applicants submit that the Office Action has inappropriately taken official notice of technical facts or specific knowledge without providing support by citation to a reference work recognized as standard in the pertinent art. Applicants submit that proper support must be given in order for Applicants to determine an appropriate response, if any. The Office Action appears to be attempting to shift the burden of response to the Applicants prior to and without satisfying the Office's initial burden of citation of support. Accordingly, Applicants respectfully request that the Examiner provide adequate evidence in the form of an affidavit in support of the finding of Official Notice, in accordance with 37 CFR § 1.104(d)(2) or a citation which supports the Official Notice, or withdraw the Official Notice rejections with respect to Claims 5

and 34.

Claims 20-25, 29, 36 and 40-42

The instant Office Action states that Claims 20-25, 29, 36 and 40-42 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hunt in view of Williams, and in further view of Nel (U.S. Patent Application Publication No. 2003/0036935). Applicants have reviewed the above-cited art and respectfully submit that the embodiments as recited in Claims 20-25, 29, 36 and 40-42 are patentable over Hunt in view of Williams, and in further view of Nel for at least the following rationale.

Claims 20-25 and 29 are dependent on independent Claim 1 and include the features of Claim 1. Claims 36 and 40-42 are dependent on independent Claim 30 and include the features of Claim 30. As described above, Applicants submit that neither Hunter nor the combination of Hunter in view of Williams teaches or suggests the features of Applicants' Claims 1 and 30. The Applicants submit that Nel fails to overcome the shortcomings of Hunt in view of Williams.

More specifically, neither Nel nor Hunt in view of Williams and further in view of Nel discloses (emphasis added)

... a link to a communication network coupled to at least one shipper user, at least one carrier user, and a plurality of partner databases storing information related to carrier availability...wherein the partner databases belong to partner exchange entities that are distinct from said carrier and shipper users of said information exchange system, are registered with said integrated exchange computer, maintain information regarding shipping demand or carrier information separate from said database, and send said information to said integrated exchange computer via an application program interface of said information exchange computer ...

as is recited in Claim 1 and similarly in Claim 30. Instead, Nel also appears to be silent to such features that involve partner databases.

For at least the foregoing rationale, Applicants respectfully submit that the

rejection of Claims 1 and 30 under 35 U.S.C. §103(a) is not supported by Hunt in view of Williams and further in view of Nel. Claims 20-25 and 29 depend from Claim 1 and recite additional features descriptive of embodiments of the present invention.

Accordingly, the Applicants submit that the rejection of Claims 20-25 and 29 under 35 U.S.C. §103(a) are also not supported by the cited art. Claims 36 and 40-42 depend from Claim 30 and recite additional features descriptive of embodiments of the present invention. Accordingly, the Applicants submit that the rejection of Claims 36 and 40-42 under 35 U.S.C. §103(a) are also not supported by the cited art.

CONCLUSION

In light of the above-listed remarks, reconsideration of the rejected claims is requested. Based on the arguments presented above, it is respectfully submitted that Claims 1, 3-30 and 33-42 overcome the rejections of record. Therefore, allowance of Claims 1, 3-30 and 33-42 is respectfully solicited.

Should the Examiner have a question regarding the instant response, the Applicants invite the Examiner to contact the Applicants' undersigned representative at the below-listed telephone number.

Respectfully submitted,
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